1336 CARRYING A CONCEALED KNIFE — § 941.231

Statutory Definition of the Crime

Section 941.231 of the Criminal Code of Wisconsin is violated by a person who goes armed with a concealed knife that is a dangerous weapon if that person has been convicted of a felony.[1]

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant went armed with a concealed knife.

   "Went armed" means that the knife must have been either on the defendant's person or that the knife must have been within the defendant's reach.[2]

   "Concealed" means hidden from ordinary observation. The knife does not have to be completely hidden.[3]

2. The concealed knife was a dangerous weapon.

   A knife is a dangerous weapon if[4]

   [it is designed as a weapon and is capable of producing death or great bodily harm. "Great bodily harm" means serious bodily injury.]

   [in the manner in which it is used or intended to be used, it is calculated or

likely to produce death or great bodily harm. "Great bodily harm" means serious bodily injury.][5]

3. The defendant had been convicted of a felony before (date of offense).

[(Name of felony) is a felony in Wisconsin.][6]

[The parties have agreed that the defendant was convicted of a felony before (date of offense) and you must accept this as conclusively proved.][7]

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 1336 was approved by the Committee in 2016. This revision was approved by the Committee in December 2021; it added to the comment.

Section 941.231, Carrying a Concealed Knife, was created by 2015 Wisconsin Act 149 [effective date: February 8, 2016]. Act 149 also repealed former § 941.24, Possession of a Switchblade Knife.

The statutory text of § 941.231 provides that "[a]ny person who is prohibited from possessing a firearm under s. 941.29 [Possession of a Firearm] who goes armed with a concealed knife that is a dangerous weapon is guilty of a Class A misdemeanor." If the instruction were to use this statutory text, both the Statutory Definition of the Crime and the list of Elements of the Crime would refer to § 941.29. Referring to § 941.29 would require defining why the defendant is prohibited from possessing a firearm under that statute. The Committee concluded that it would be simpler and more direct to omit the reference to the defendant being "prohibited from possessing a firearm under section 941.29 of the Wisconsin Statutes" and state the status element in terms of the reason why the defendant is prohibited from possessing a firearm

under § 941.29.

1. The instruction is drafted for cases involving going armed with a concealed knife that is a dangerous weapon by a person convicted of a felony, which is the most common basis for the prohibition on firearm possession under § 941.29. See § 941.29(1m)(a), (b), and (bm). However, the prohibition in § 941.231 applies to other categories of persons who are prohibited from possessing a firearm under § 941.29. See § 941.29(1m)(c) to (g). For cases involving subs. (1)(c) through (g), the instruction must be modified. For cases involving subs. (1m)(f) and (g), the modification may be based on Wis JI-Criminal 1344, Possession of a Firearm by a Person Subject to an Injunction.

2. The definition of "went armed" in the instruction is based on the one articulated in case law under the old carrying a concealed weapon statute. See State v. Mularkey, 201 Wis. 429, 432, 230 N.W. 76 (1930), and other cases cited in footnote 4, Wis JI-Criminal 1335.

3. The "hidden from ordinary observation" requirement is adapted from State v. Mularkey, 201 Wis. 429, 432, 230 NW 76 (1930). Also see, State v. Asfoor, 75 Wis.2d 411, 433, 249 N.W.2d 529 (1976), which approved an instruction that included this requirement.

4. Choose the alternative supported by the evidence. These are two of the four alternatives in the standard definition of "dangerous weapon." See § 939.22(10). Eliminated are those relating to firearms and electric weapons, which would not apply to a knife. See Wis JI-Criminal 910 for footnotes discussing each alternative.

5. This instruction uses the standard definition of "dangerous weapon" provided in § 939.22(10), in which a knife is applicable. However, 2015 Wisconsin Act 149 also created subsection 941.23(1)(ap) which provides that "Notwithstanding s. 939.22(10), 'dangerous weapon' does not include a knife." Because § 941.23(1)(ap) is prefaced by the phrase "in this section," the exclusion applies only to offenses provided in § 941.23.

6. The prohibition on firearm possession in § 941.29 applies to person convicted of a felony in Wisconsin and also to persons convicted of crimes in other jurisdictions that would be felonies in Wisconsin. In the Committee's judgment, the way the third element is phrased should be suitable for handling either alternative. See footnote 7, Wis JI-Criminal 1343, for additional considerations relating to out of state convictions.

The Committee also concluded that the statute need not be interpreted to require that the defendant "know he was convicted of a felony" or know that he was prohibited from carrying a concealed knife that is a dangerous weapon. A person may fairly be held to know the nature of a crime of which he was convicted and to know the disabilities that may attend that conviction.

7. Defendants may offer to stipulate to the fact of their felon status. The bracketed statement in the instruction includes the standard statement on the effect of a stipulation found in Wis JI-Criminal 162, Agreed Facts. The effect of a stipulation in a prosecution for violating § 941.29 has been described as follows:

> . . . where prior conviction of a felony is an element of the offense with which the defendant is charged and the defendant is willing to stipulate that he or she is a convicted felon, evidence of

> the nature of the felony is irrelevant if offered solely to establish the felony conviction element of the offense. The trial court therefore abused its discretion in allowing the prosecutor to inform the jury as to the nature of McAllister's crime.

State v. McAllister, 153 Wis.2d 523, 525, 451 N.W.2d 764 (Ct. App. 1989). The Committee concluded the effect of a stipulation to felon status should be the same in a prosecution under § 941.231.

The fact of felon status may still be revealed; it is the nature of the felony that is not to be disclosed. State v. Nicholson, 160 Wis.2d 803, 804, 467 N.W.2d 139 (Ct. App. 1991).

Care must be taken where a stipulation goes to an element of a crime. A waiver should be obtained. See Wis JI-Criminal 162A Law Note: Stipulations. An example of a complete waiver inquiry is provided in footnote 8, Wis JI-Criminal 1343.